
EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 1st July 2002, amends the Value Added Tax (Special Provisions) Order 1995 (the “principal Order”). It prevents the sale of goods being taxed under the margin scheme following certain assignments of rights in hire purchase or conditional sale agreements, if the assignors could not themselves have used the scheme to sell the goods. By article 1(2), the Order does not affect sales on or after 1st July 2002 if the related assignment took place before that date.

The Order amends article 12 of the principal Order, changing the conditions which must be met in order for taxable persons to be able to opt to use the margin scheme to account for VAT on the sale of works of art, antiques, collectors' items and other second-hand goods (but not motor cars).

The new concepts of “de-supplied transaction” and “article 5 transaction” are introduced into paragraph (3)(a) of article 12 and defined in a new paragraph (10). A new paragraph (3A) provides an additional condition in respect of article 5 transactions that there is a “relevant predecessor in title”, which is defined in a new paragraph (11).

These changes affect banks and financial institutions selling goods they obtained when they were assigned the rights in a hire purchase or conditional sale agreement, and all businesses selling goods they obtained as the result of the transfer of a going concern (TOGC). In such cases businesses will only be able to use the margin scheme if the last person to obtain the goods other than by way of an assignment of rights or a TOGC (an article 5 transaction) was himself entitled to use the margin scheme on the sale of the goods by him. Where there has been a succession of assignments or TOGCs, or a mixture of both, it is therefore the first person in that chain who must have been so entitled. In either case, this other person is the relevant predecessor in title.

The Order also revises article 12(5)(a) of the principal Order so that for the purpose of determining the margin, in the case of goods obtained as a result of an assignment or TOGC, the purchase price to be used will be the price paid for the goods by the relevant predecessor in title. There is already a similar rule in respect of TOGCs, which the Order replaces with this wider provision. It also confirms the purchase price to be used for sales of goods obtained as the result of a transaction (other than an assignment or TOGC), which for VAT purposes is treated as neither a supply of goods nor a supply of services (a de-supplied transaction). In this case the person opting to use the margin scheme should use the price he paid when he obtained the goods.